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September 12, 2013

VIA HAND DELIVERY

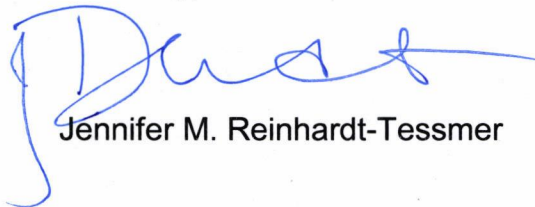
Jean D. Jewell, Secretary
Idaho Public Utilities Commission
472 West Washington Street
Boise, Idaho 83702

Re: Case No. IPC-E-13-17
J. R. Simplot Company's Petition – Idaho Power Company's Supplement to
Its Motion to Dismiss

Dear Ms. Jewell:

Enclosed for filing in the above matter are an original and seven (7) copies of Idaho Power Company's Supplement to Its Motion to Dismiss.

Sincerely,



Jennifer M. Reinhardt-Tessmer

JRT:csb
Enclosures

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Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF)	
J.R. SIMPLOT COMPANY FOR A)	CASE NO. IPC-E-13-17
DETERMINATION OF PRICE)	
REGARDING THE PURCHASE AND)	IDAHO POWER COMPANY'S
ACQUISITION OF CERTAIN ASSETS)	SUPPLEMENT TO ITS MOTION TO
OWNED BY IDAHO POWER COMPANY.)	DISMISS
)	

Idaho Power Company's ("Idaho Power" or "Company") Motion to Dismiss filed on August 28, 2013, was crafted specifically to respond to the J. R. Simplot Company's ("Simplot") Application and Request to Determine Price ("Application")¹ filed pursuant to I.C. § 61-328 for "approval of its purchase and acquisition of certain assets owned by the Idaho Power Company . . . and to set a price for said purchase." Application, p. 1. In light of the confusion expressed in Simplot's Answer to Idaho Power's Motion to Dismiss for Lack of Subject Matter Jurisdiction ("Answer"), the Company respectfully

¹ The Commission processed Simplot's Application as a Petition under its Rules of Procedure in Order No. 32870.

submits this Supplement with the goal of clarifying Rule M and the testimony in Case No. IPC-E-11-08 (its last general rate case).

**I. IDAHO POWER'S MOTION TO DISMISS IS CONSISTENT WITH ITS
PRIOR POSITION IN CASE NO. IPC-E-11-08.**

Simplot's Answer is conspicuously void of any authority supporting the position Simplot originally took in its Application—that I.C. § 61-328 permits a customer to unilaterally confer jurisdiction on the Idaho Public Utilities Commission ("Commission") to determine the purchase price of utility-owned assets. Instead, Simplot takes a new approach, asserting that jurisdiction is automatically conferred on the Commission to determine a sale price of Company-owned assets through Rule M and Idaho Power's testimony in the last rate case. In so doing, Simplot misconstrues and inaccurately portrays Idaho Power's position in that case, the scope of the Commission's Order therein (Order No. 32426), as well as Rule M.

First, nothing in the last rate case (including Idaho Power's testimony therein) conferred jurisdiction on the Commission to order an involuntary sale of Idaho Power's property. In Order No. 32426, the Commission found that "there ought to be an opportunity for the customer to purchase the assets on a case-by-case basis," and acknowledged Idaho Power's willingness to sell in "certain situations" pursuant to Rule M, which covers the sale of Company-owned facilities beyond the point of delivery. See Order No. 32426, p. 32. The Commission clearly stated that a proceeding to determine the value of such facilities would be necessary pursuant to I.C. § 61-328. *Id.* "[W]e envision that the sale of facilities will occur on a case-by-case basis and that the purchasing price will be based upon the value of the facilities to be transferred to the customers." *Id.*, p. 33. This is as far as the Commission went on the issue. In fact, at

the time of the Commission's Order, Idaho Power had not yet determined a methodology for a valuation of Company assets for such a sale. See Youngblood Tr., p. 253, ll. 17-20 ("The Company is not proposing any specific pricing methodology in this case, just the proposal to change its tariffs in order to provide an *option* for customers to purchase the facilities.") (emphasis added).

Nevertheless, because Simplot cannot find support for its unilateral Application in I.C. § 61-328, Simplot's Answer focuses on one sentence in the testimony offered by Mr. Youngblood on behalf of Idaho Power, which Simplot grossly mischaracterizes. In his testimony, Mr. Youngblood stated that if a sales price cannot be mutually agreed upon, "the Company or the customer may initiate a proceeding before the Commission in order to determine the *appropriateness* of the price." *Id.*, p. 254, ll. 3-5 (emphasis added). Despite Simplot's unfounded argument that this statement somehow conferred open-ended jurisdiction on the Commission to determine future sales prices, Mr. Youngblood was actually describing a situation in which both the customer and the Company would willingly go before the Commission for approval or rejection of Idaho Power's proffered sale price (in accordance with the plain language of I.C. § 61-328); he was not stating that the Commission could determine the price without Idaho Power's willingness to sell. To be clear, Mr. Youngblood stated that the Commission could determine the "appropriateness of the price," not "an appropriate price." *Id.* In fact, when asked to describe the Company's proposal for tariff language to provide customers with a buyout option, Mr. Youngblood described the proposed Rule M, stating that "the Company has provided a new option for customers who may request to purchase Company-owned facilities beyond the point of delivery." *Id.*, p. 251, ll. 20-23.

Mr. Youngblood went on to state that “all sales must be approved by the Commission” and meet the provisions of I.C. § 61-328, specifically noting that “the Company would make a filing with the Commission for each proposed sale asserting that such sale would be in the public interest.” *Id.*, p. 251, ll. 24-25 and p. 253, ll. 11-13. Mr. Youngblood’s repeated references to a customer’s “request” to purchase the facilities, and Idaho Power’s “option” to sell, mirrors the actual wording of Rule M, which provides, in pertinent part, “Eligible Customers may request that the Company design, install own, and operate transformers and other facilities This service is provided at the Customer’s request and at the option of the Company” See Idaho Public Utilities Code No. 29, Tariff No. 101, Original Sheet No. M-1. At no point in the rate case, nor in Rule M, did Idaho Power agree to a process whereby it could be forced, against its will, to sell its used and useful property—particularly at a price the Company has determined would be to the detriment of other customers and its shareholders.

Further, even if the Commission interprets Idaho Power’s testimony in the manner proposed by Simplot, such testimony cannot confer jurisdiction on the Commission where such jurisdiction is lacking. See *Lemhi Telephone Co. v. Mountain States Tel. & Tel. Co.*, 98 Idaho 692, 696 (1977) quoting *Arrow Transp. Co. v. Idaho Public Utilities Comm’n*, 85 Idaho 307, 379 P.2d 422 (1963) (The Commission “has no inherent power; its powers and jurisdiction derive entirely from the enabling statutes and ‘nothing is presumed in favor of its jurisdictions.’”) Nowhere in Rule M does it state that a customer can unilaterally invoke the Commission’s jurisdiction to determine the sale price of a utility’s facilities. To the contrary, Rule M provides that all sales of facilities must comply with I.C. § 61-328 and be approved by the Commission. As noted by the

Commission in the rate case, under Idaho Power's Rule M, "customers may ask to buy Company-owned facilities installed beyond the delivery point" and the Commission must approve all sales. Order No. 32426, p. 25 (emphasis added). As set forth at length in Idaho Power's Motion to Dismiss, the Commission's jurisdiction under I.C. § 61-328 is permissive and approval of a proposed sale brought by the utility or jointly by a utility and a customer is very different than a customer unilaterally petitioning the Commission to determine a sale price of the utility's property, which is not provided for in the plain language of I.C. § 61-328.

II. IDAHO POWER DOES NOT HAVE A MONOPOLY ON THE SUPPLY OF ELECTRICAL EQUIPMENT BEYOND THE POINT OF DELIVERY.

Simplot's Answer appears to confuse Idaho Power's sale of electricity (and the Commission's ability to regulate the sale thereof) with Idaho Power's sale of electrical equipment to customers for private use beyond the point of delivery. Idaho Power does not have a monopoly on the supply and sale of electrical facilities, nor does it wish to act as a common distributor of such equipment. Further, the Commission's role in regulating the sale of equipment beyond the point of delivery is limited to ensuring that such sales are reasonable and consistent with the public interest in order to protect customers and resources. See Statement of Purpose RS10362, 2000 Idaho Laws Ch. 224 (H.B. 815). If Simplot truly believes that Idaho Power's proffered sale price (which the Company has determined is the price at which the sale will not adversely impact other customers and its shareholders) is, in fact, "exorbitant," Simplot has the option of purchasing the equipment from a third-party.

By way of background, Simplot made the voluntary request that Idaho Power (and accordingly, its customers) front the capital to install Company-owned facilities

beyond the point of delivery for Simplot's private business use. This permitted Simplot to avoid the capital investment into purchasing such facilities, in exchange for payment of a monthly facilities charge. Thereafter, Simplot determined it wanted to purchase its own equipment rather than pay a monthly charge, and so Simplot requested a sales price determination from Idaho Power.

As was contemplated in Case No. IPC-E-11-08, Idaho Power put considerable thought into a facility sale price methodology that will keep its other customers and shareholders reasonably whole. Having done so in good faith, the Company remains willing to sell the facilities in question to Simplot at the price Idaho Power previously quoted. However, Idaho Power cannot agree to sell the facilities to Simplot at a proposed price that will not fully reimburse Idaho Power's customers and shareholders for their investment. Idaho Power has a duty to its customers and shareholders to ensure it receives a fair sale price for those facilities. Again, if Simplot believes the sale price is not fair, it can request that the Company remove the currently installed facilities pursuant to Rule M and purchase the equipment elsewhere.

III. CONCLUSION

It is unprecedented for Idaho Power to offer to sell facilities beyond the point of delivery for the convenience of the non-utility customer rather than for operational reasons. The Company is in the admittedly difficult position of attempting to accommodate a single customer's interests while also ensuring the Company's general body of customers and shareholders recoup their investment in operating property located beyond the point of delivery. As the Company envisioned when it proposed Rule M language governing the sale of Company-owned facilities beyond the point of

delivery, the Commission will ultimately have an important role in the Company's sale of facilities by ensuring the sale price is reasonable and in the public interest, in accordance with the plain language of I.C. § 61-328. At such time, Idaho Power will explain how it calculated its proposed sale price and consider feedback from the Commission and its Staff regarding the appropriateness thereof. However, as explained in Idaho Power's Motion to Dismiss, I.C. § 61-328 does not permit a customer to unilaterally confer jurisdiction on the Commission to determine a price of Company-owned assets.

Respectfully submitted this 12th day of September 2013.



JENNIFER M. REINHARDT-TESSMER
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of September 2013 I served a true and correct copy of IDAHO POWER COMPANY'S SUPPLEMENT TO ITS MOTION TO DISMISS upon the following named parties by the method indicated below, and addressed to the following:

Commission Staff


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Deputy Attorney General
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